

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 265 of 1984

in

SPECIAL CIVIL APPLICATION No 4722 of 1981

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL and

MR.JUSTICE C.K.BUCH

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

P R GANDHI

Versus

STATE OF GUJARAT

Appearance:

MR TS NANAVATI for Appellant
MY BY MANKAD for Respondent No. 1 & 2
SERVED BY RPAD - for Respondent No. 3

CORAM : MR.JUSTICE B.C.PATEL and

Date of decision: 05/11/98

ORAL JUDGEMENT (per Patel, J.)

Appellant, original petitioner of Spl. C.A. No.

4722 of 1981, being aggrieved by the judgment and order of the learned Single Judge dated 15,16 and 18th March 1982, has preferred this appeal.

2. The appellant was appointed as a Clerk-cum-Typist by the Chairman of the Bulsar District Marginal Farmers & Agricultural Labourers Development Agency, Bulsar in the pay scale of Rs.130-240. Government of India took a decision as a result of which there was merger of the Small Farmers Development Agency Programme with the new Integrated Rural Development Programme, and for the expansion of the new programme to all the blocks in the country. It is at that point of time question of revitalizing and strengthening of the District Rural Development Agencies formerly known as Small Farmers Development Agency, Drought Prone Areas Programme Agencies, Small Farmers and Agricultural Labourers Development Agencies established in each District under registration of Societies Act, 1960, was under the active consideration of the Government. It appears that after considering the objects of the Societies and the capacity to spend the amount, Government approved the model pattern for administrative machinery for District Rural Development Agencies in respect of which the expenses were required to be met within 7.5% of the Integrated Rural Development Programme schematic allocations during the VIth plan period subject to the maximum limit of Rs.30 lakhs over a period of five years. The District Agencies were required to consider the requirement of the particular district and likely workload of each post and posts were required to be filled in thereafter. This policy must have been promulgated earlier than 22nd April 1981 because Annexure 'J' to the petition, a resolution, is dated 22nd April 1981. How the posts of Class I Officers are to be filled in is mentioned in detail in the resolution dated 22.4.1981. So far as other posts are concerned, it is pointed out in the circular that the posts may be filled up by taking suitable officers on deputation from Panchayat or Government cadres in consultation with District Panchayat and Government Departments. The District Agency was required to prepare a list of suitable officers for appointment on these posts. It appears that the Finance Department gave concurrence on 17th March 1981 and General Administration Department gave concurrence on 19th March 1981. The annexure to the Resolution dated 22nd April 1981

(Annexure 'J' to the petition) indicates model pattern. The posts indicated therein are 1 post of Director, 9 posts of Assistant Project Officers, 1 post of Stenographer Gr.II, 2 Investigators, 1 Accountant, 1 Aval Karkoons, 1 Research Assistant, 1 Statistical Assistant, 2 Senior Clerk/Senior Accounts Clerk, 8 Clerks, 3 Clerk-cum-Typist [2 Gujarati & 1 English], 1 Steno Typist Gr. III, 6 Peons and drivers equivalent to the number of vehicles.

3. It appears that so far as Valsad District is concerned, Chairman of the Agency, on 15.9.1981 indicated the staff pattern. There were 6 Assistant Project Officers instead of 9 as indicated in the model pattern. There was no post of Stenographer Gr. II. but there was post of Steno Typist Gr. III in the scale of Rs.260-500. With regard to other posts also, we find that the numbers were not the same as mentioned in the model pattern, obviously because of the need and limitation put on by the circular regarding expenses. It transpires that the appellant was sought to be promoted to the post of Steno-Typist which was kept in abeyance. Annexure 'D' dated 18.2.1981 is the order passed by the Chairman wherein atleast at three places there is reference to Steno-Typist. By Annexure 'D', the appellant was promoted to the post of Steno-cum-Typist in the pay scale of Rs.475-800, i.e. of Stenographer Gr. II. One thing is clear that the appellant was promoted to the post of Steno Typist which was kept in abeyance. We find reference to this aspect in the order also.

4. It appears that vide Annexure 'E', the appellant came to be reverted to the original post and that has annoyed the petitioner as a result of which, representation was made but the same was not decided in favour of the appellant-petitioner. Hence the aforesaid petition came to be filed.

It appears that vide Annexure "I" dated 15.9.1981 resolution came to be passed. It was decided that a person should be appointed on deputation basis and the Chairman should decide the staff pattern for which he was also authorised and in view of this, the persons who were directly appointed and thereafter promoted were sought to be reverted to their original posts. It seems that in view of this resolution, not only the appellant but others were also reverted. So far as the appellant is concerned, the grievance made is that once the Court having accepted that the appellant was rightly promoted by an order prior to the decision taken by the Government, vide resolution dated 22nd April 1981 by

which the staff pattern was fixed, the appellant could not have been reverted to the original post and appellant ought to have been continued on the same post to which the appellant was promoted.

6. Learned Single Judge, after considering the relevant material placed on record held that "the order of reversion of the appellant to the post of Clerk-cum-Typist in the pay scale of Rs.260-400 is required to be quashed. The order of reversion will continue to be operative but the post to which the petitioner will stand reverted thereunder is the post of Steno Typist Gr. III in the pay scale of Rs.350-500 on and with effect from the date on which the said order became operative". On the aforesaid basis, the petitioner was held entitled to all consequential benefits including the difference of salary and allowances, seniority etc.

7. It is required to be noted that the Government is not the employer of the staff employed by the District Agency. The District Agency is registered under the Societies Registration Act. The State Government could not have given any mandatory directions and the District Agency was at liberty to assess the workload to create the requisite posts and then to fill them up. Learned Single Judge has considered the decision of the Apex Court in the case of N. Ramanatha vs. State of Kerala reported in AIR 1973 SC 2641 and has observed as under :-

"It is settled law that power to create, continue and abolish any civil post is inherent in the authority and that it is a policy decision and that it is dependent on exigencies of circumstances and administrative necessity. The Court cannot, in the absence of concrete data, reach the conclusion about arbitrariness merely because a post is abolished."

8. Perusing the records, it is very clear that it is not a case where the appellant was victimized and reverted to the original post. Along with the appellant there were some others also. Once a decision is taken by the agency, which is not arbitrary or malafide, it cannot be said that the decision is bad. Learned Single Judge, after considering Annexures 'J', 'K' and other relevant material, held that the order of reversion will continue to be in operation to one post lower. It clearly appears from annexure 'D' that the appellant was promoted to the post of Steno Typist which was kept in abeyance. In Annexure 'D', there is no reference to the post of

Stenographer Gr. II as having been kept in abeyance. Annexure 'K' refers only to the post of Steno Typist in the establishment and not of Stenographer Gr. II. In the District in question there was no post of Stenographer Gr. II but only Steno-Typist. Ordinarily promotion would be to the next higher post and not to any higher post than the immediate next post. It is required to be noted that on behalf of the Agency it was contended that no evidence worth name was placed by the appellant that the appellant was qualified and had requisite qualifications for being appointed to the post of Steno-Typist or Stenographer Gr. III. It was also pointed out that reversion is because of administrative exigencies and in view of the the fact that the appellant was working, the Court exercised its discretion and held that the appellant having once been appointed can be reverted to the lower post.

9. In view of what is stated hereinabove, we find no merit in the appeal and there is no reason to interfere with the judgment of the learned Single Judge. The appeal is dismissed.

csm./ -----